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Reply to Advisory Action of Aug. 8, 2005

REMARKS

Claims 1-22 were originally presented for examination. Claim 2 was amended in a response filed February 5, 2005, responding to the Office action mailed October 5, 2004. No claims were amended in a response filed on July 5, 2005, in response to a final Office action mailed on May 5, 2005. Claims 1-22 are pending in the Application and were rejected in the Advisory Action mailed August 8, 2005. No new claims are added by this amendment. Claims 1 and 16 are independent claims. Claims 2-15 and 30, and 17-22 depend either directly or indirectly from independent claims 1 and 16, respectfully.

Claim Rejections

Claims 1-6, 8, 9, 11-14 and 16-22 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Lajoie et al. (U.S. Pub. 2004/0015952A1). Applicants respectfully traverse the rejection.

With regard to the anticipation rejections, MPEP 2131 states, "[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California,* 814 F.2d 628, 631 2 USPQ2d 1051, 1053 (Fed.Cir. 1987). MPEP 2131 also states, "[t]he identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.,* 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

Regarding claim 1, Applicants respectfully submit that the Lajoie reference fails to teach, suggest or disclose, for example, at least, "loader software that supports a plurality of loaders".

As presented previously by Applicants, a "loader" may be defined as "[a] utility that loads the executable code of a program into memory for execution." (See, e.g., Microsoft Press Computer Dictionary Third Edition, 1997, page 287) The term "load" may be defined as "[t]o place information from storage into memory for processing, if it is data, or for execution, if it is program code." (See, e.g., Microsoft Press Computer Dictionary Third Edition, 1997, page 287) A loader may therefore be defined as "a utility that places information from storage into memory

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for execution." Applicants respectfully submitted that the final Office action had failed to identify where in the Lajoie reference such an element is taught. However, if Applicants were to agree, solely for the purpose of argument, that the FIC of Lajoie corresponds to the "loader software" of claim 1, then the final Office action had failed to specifically identify in the Lajoie reference those elements that correspond to the "plurality of loaders" of claim 1. The first Office action alleged that Lajoie discloses that "the firmware integrity checker supports transferring control to or loading both the application program and the upgrade program." (See item 4(b) on page 4 of the first Office action.) Applicants argued that the mere transfer of control is not the same as loading, as is clear with respect to the above discussion of the terms "load" and "loading." Lajoie fails to teach, among other things, an application program or an upgrade program that is a loader.

In the Advisory Action, Examiner argues that "Lajoie discloses that the firmware integrity checker (FIC) 350 transfers control to the application program 310 or to the upgrade program 320" and that "to transfer control to a program is to initiate or resume execution of the program." Examiner then adds that the application program and the upgrade program of Lajoie are stored in non-volatile memory and that "inherently, the program code stored in the non-volatile memory 210 is first loaded into RAM 280 or into some other temporary memory for subsequent execution by the microprocessor 270," and as a result, when the FIC "transfers control to a program, it initiates loading the program from storage for execution." Furthermore, Examiner argues that FIC "support loading and executing both the application program 310 and the upgrade program 320, and is thus loader software that supports a plurality of loaders."

Applicants respectfully traverse the arguments presented by Examiner. As an initial matter, it is not inherent that program code stored in non-volatile memory is first loaded into RAM or some other temporary memory for subsequent execution by a microprocessor. Several memory types allow storing program code and execution of such code directly in the memory without first loading into RAM or some other temporary memory. Additionally, the cited reference, Lajoie specifically states that "functions are available to the code running in the

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NVM 210." (Lajoie, [0027], lines 1-2) (emphasis added.) In other words, the Lajoie reference, contrary to Examiner's position, runs the code directly in the non-volatile memory and does *not* first load it into RAM. In fact, Lajoie teaches the exact opposite of inherency claimed by Examiner. Therefore, the FIC does not function like a loader. Furthermore, Examiner has not indicated in what way the upgrade program and application program resemble loaders such that they may be considered a plurality of loaders. The upgrade program of Lajoie "performs programming tasks on the device" and allows upgrading of "the application program." (Lajoie, Abstract.) Lajoie also defines the application program as "the control program of the corresponding device." (Lajoie, [0028], lines 11-13.) Using the same definition provided for a loader, hereinabove, the update program and the application program of Lajoie cannot be characterized as loaders and therefore cannot be considered "a plurality of loaders."

Therefore, Applicants respectfully submit that the Lajoie reference fails to anticipate Applicants' claim 1, for at least the reasons given above. Claim 1 is an independent claim having dependent claims 2-15. Applicants believe that independent claim 1 is allowable. Because claims 2-15 are dependent claims of claim 1, Applicants respectfully submit that claims 2-15 are, therefore, also allowable for at least the same reasons given with respect to claim 1. Applicants therefore request that the rejection of claims 1-6, 8, 9, and 11-14 under 35 U.S.C. § 102(e) be withdrawn.

Regarding claim 16, Applicants respectfully submit that the Lajoie reference fails to teach, suggest or disclose, among other things, "storing a location in the file system of the saved information for updating firmware to a memory reference."

As presented previously by Applicants, Lajoie discloses a firmware header, which holds data associated with the current version of the firmware and data associated with the different programs found on the device (paragraph 0029, lines 1-4). The firmware header, in Lajoie, does not hold data associated with the downloaded and saved information for updating firmware.

In the Advisory Action, Examiner argues that a "new application program 310 is for upgrading the firmware and thus the new application program 310 is 'saved information for

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updating firmware.'"

Applicants respectfully traverse the arguments presented by Examiner. The application program according to Lajoie "is responsible for switching to upgrade mode [and] once the upgrade program takes control, it communicates with the server" and performs the upgrade process. (Lajoie, [0033].) Additionally, Lajoie states "if the FIC state is IDLE, no upgrade process is running. The control can be transferred to the application program." (Lajoie, [0039].) Therefore, the application program in Lajoie does not partake in the upgrade process and as a result cannot be characterized as "information for updating firmware."

Therefore, Applicants respectfully submit that the Lajoie reference fails to anticipate Applicants' claim 16, for at least the reasons given above. Claim 16 is an independent claim having dependent claims 17-22. Applicants believe that claim 16 is allowable. Because claims 17-22 are dependent upon claim 16, Applicants respectfully submit that claims 17-22 are, therefore, also allowable, for at least the same reasons given with respect to claim 16. Applicants therefore respectfully request that the rejection of claims 16-22 under 35 U.S.C. § 102(e) be withdrawn.

Conclusion

Applicants believe that all claims 1-22 are in condition for allowance. If Examiner disagrees or has any questions regarding this submission, Applicants invite Examiner to telephone the undersigned at (312) 775-8000.

A Notice of Allowability is courteously solicited.

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    The Commissioner is hereby authorized to charge additional fees or credit overpayments to the deposit account of McAndrews, Held & Malloy, Account No. 13-0017.

Date: September 6, 2005   Respectfully submitted,

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